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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/826,066	04/16/2004	Diana Dirle	DIR-01-04	9959
40816	7590	08/15/2006		
BRADLEY D. GOLDIZEN 505 SOUTH INDEPENDENCE BOULEVARD, SUITE 102 VIRGINIA BEACH, VA 23452			EXAMINER KEASEL, ERIC S	
			ART UNIT	PAPER NUMBER
			3753	

DATE MAILED: 08/15/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/826,066

Applicant(s)

DIRLE ET AL.

Examiner

Eric Keasel

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 09 June 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-15 and 17-20 is/are pending in the application.
- 4a) Of the above claim(s) 8-14 and 18-20 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-7, 15 and 17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on April 16, 2004 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

1. Applicant's election with traverse of Group I in the replies filed on August 31, 2005 and June 9, 2006 is acknowledged. The traversal is on the ground(s) that applicant thinks that a search of one group and species would necessarily cover the subject matter of the non-elected group. This is not found persuasive because the apparatus claims can and are examined solely within class 222 (dispensers). The examiner has not searched where the method of treating an animal's paw would be searched (in class 119). Furthermore, the species are drawn to two distinct inventions with different searches. The powder measures that are built into the bottom of a reservoir require a different search from the powder measure that is removed from the reservoir.

The requirement is still deemed proper and is therefore made FINAL.

2. Claims 8-14 and 18-20 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected inventions, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on August 31, 2005.

3. Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a request under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Claim Rejections - 35 USC § 112

4. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

5. Claims 1-7, 15, and 17 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention. The preamble to each of the claims has been amended to recite “handheld”. The originally filed application is silent as to whether this is intended to be a handheld device. In fact, the hook (21) for a lanyard implies that it was not intended to be a handheld device. This is a new matter rejection. There would arguably be support for this limitation if it is read broadly (i.e. most devices are capable of being handheld). The claims will be treated to that extent.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

7. Claims 1-3, 7, 15, and 17 are rejected under 35 U.S.C. 102(b) as being anticipated by Campos (US Patent Number 2,116,300).

Campos discloses a powder dispenser with a rotatable powder measure and a hinged end cap at the opposite end. Circular extensions (24, 28) extend through circular holes formed in wall extensions of the reservoir.

8. Claims 1-3, 6, 7, 15, and 17 are rejected under 35 U.S.C. 102(b) as being anticipated by Moe (US Patent Number 2,059,135).

Moe discloses a powder dispenser with a rotatable powder measure and a hinged end cap at the opposite end. Circular extensions extend through circular holes formed in wall extensions of the reservoir.

9. Claims 1-3, 15, and 17 are rejected under 35 U.S.C. 102(b) as being anticipated by Austin (US Patent Number 540,345).

Austin discloses a powder dispenser with a rotatable powder measure and a removable end cap at the opposite end. The rotatable powder measure has pins that mate with holes in the reservoir (see Fig. 3).

10. Claims 1-3, 6, 7, 15, and 17 are rejected under 35 U.S.C. 102(b) as being anticipated by Kubo (US Patent Number 2,050,756).

Kubo discloses a powder dispenser with a rotatable powder measure and a removable end cap at the opposite end. The rotatable powder measure is hinged and the post of the hinge (9) extends into holes in the reservoir.

11. Claims 1-3, 6, 15, and 17 are rejected under 35 U.S.C. 102(b) as being anticipated by Jopling (US Patent Number 934,192).

Jopling discloses a powder dispenser with a rotatable powder measure and a removable end cap at the opposite end. Circular extensions extend through circular holes formed in wall extensions of the reservoir.

12. Claims 1-7 are rejected under 35 U.S.C. 102(b) as being anticipated by Wiltse (US Patent Number 415,010).

Wiltse discloses a powder dispenser with a rotatable powder measure and a removable end cap at the opposite end. The end cap has a square portion that fits into the square reservoir. The rotatable powder measure has pins that mate with holes in the reservoir (see Fig. 3). Circular extensions (b) extend through circular holes formed in wall extensions of the reservoir.

Claim Rejections - 35 USC § 103

13. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later

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invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

14. Claims 4 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Austin.

Austin discloses the square lid fitting around the reservoir rather than in it. The examiner took official notice that modifying a square lid to have a portion that fits in the reservoir rather than around it is old and well known in the art for reasons that are old and well known in the art. Since applicant did not traverse this assertion, it is taken as admitted prior art.

15. Claims 4 and 5 are rejected under 35 U.S.C. 103(a) as being unpatentable over Kubo.

Kubo discloses the square lid fitting around the reservoir rather than in it. The examiner took official notice that modifying a square lid to have a portion that fits in the reservoir rather than around it is old and well known in the art for reasons that are old and well known in the art. Since applicant did not traverse this assertion, it is taken as admitted prior art.

Response to Arguments

16. Applicant's arguments filed June 9, 2006 have been fully considered but they are not persuasive.

Applicant argues that devices of the remaining 6 anticipatory references are not handheld and don't have wall extensions with circular holes for circular extensions of the rotatable powder measure. The examiner disagrees. Each of the 6 references in the remaining 35 USC 102 rejections is handheld (at least to the extent that applicant's device is handheld. Also, the references all have circular extensions on the rotatable measure that extend through holes in wall extensions of the reservoir.

Conclusion

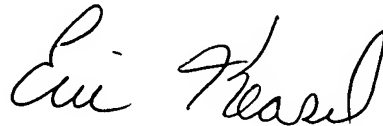
17. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

18. Any inquiry concerning this communication should be directed to Eric Keasel at telephone number (571) 272-4929, who can normally be reached Monday-Friday. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read "Eric Keasel".

ERIC KEASEL
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 3700